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Tax Exemption of Educational Property in New York

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TAX EXEMPTION OF EDUCATIONAL PROPERTY IN NEW YORK

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The author discusses the New York law applicable to the exemption of educational property from taxation. He appraises the statutory requirements that property must be owned by a corporation or association "organized exclusively" for educational purposes and must also be "used exclusively" for carrying out such purposes in order to qualify for exemption. At the same time, he examines the case law which has developed in connection with this matter.

I

INTRODUCTION

Section 300 of the New York Real Property Tax Law[1] provides that "All real property within the state shall be subject to real property taxation . . . unless exempt therefrom by law."[2] This article will discuss the exemption of educational property[3] from taxation and will be concerned primarily with Section 420 of the Real Property Tax Law,[4] which states, in part, as follows:

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[1] The Real Property Tax Law was enacted by Chapter 959 of the Laws of 1958, and became effective Oct. 1, 1959. It includes former provisions of the Tax Law, the Education Law, the Village Law and various other unconsolidated laws concerned with the assessment and taxation of real property. Recurring reference will be made to opinions of Counsel of the New York State Board of Equalization and Assessment. See N.Y. Real Prop. Tax Law §§ 200, 202 (McKinney 1960). These opinions have not been generally published and the writer acknowledges his indebtedness and appreciation to Robert F. Kilmer, Esq., the Board's able Counsel, for making these materials available.

[2] N.Y. Real Prop. Tax Law § 300 (McKinney 1960). N.Y. Const. art. 3, § 17 (McKinney 1954) prohibits the legislature from passing a private or local bill granting an exemption from taxation on real or personal property. In this same connection N.Y. Const. art. 16, § 1 (McKinney 1954) states:

> Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real or personal property used exclusively for religious, educational or charitable purposes as defined by law and owned by any corporation or association organized or conducted exclusively for one or more of such purposes and not operating for profit.

See also N.Y. Const. art. 18, § 2 (McKinney 1954) regarding the powers of the legislature relative to housing.

[3] The term "educational property" is used in this article as a shorthand reference to real property which is owned by an educational institution and used for educational purposes.

[4] N.Y. Real Prop. Tax Law § 420 (McKinney 1960, Supp. 1966), effective Oct. 1, 1959, derived from N.Y. Tax Law § 4(6), repealed by N.Y. Laws of 1958, ch. 959. Section 422 of the Real Property Tax Law provides that the real property of a membership, limited profit housing company organized under the Membership Corporations Law and Article II of the Private Housing Finance Law is under certain circumstances exempt from taxation if "used exclusively to provide housing and auxiliary facilities for faculty members, students, employees, . . . researchers and other personnel and their immediate families in attendance or employed at colleges, universities, educational institutions. . . ." With respect to the relationship between §§ 420 and 422, see St. Luke's Hosp. v. Boyland, 12 N.Y.2d 135, 144-45, 187 N.E.2d 769, 773, 237 N.Y.S.2d 308, 313-14 (1962). For a discussion of the historical development of New York law relating to the exemption of educational property, see Saxe, Charitable Exemption From Taxation in New York State on Real and Personal

§ 420. Non-profit organizations

1. Real property owned by a corporation or association organized exclusively for the moral or mental improvement of men and women, or for religious, bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, public playground, scientific, literary, bar association, medical society, library, patriotic, historical or cemetery purposes, for the enforcement of laws relating to children or animals, or for two or more such purposes, and used exclusively for carrying out thereupon one or more of such purposes either by the owning corporation or association or by another such corporation or association as hereinafter provided shall be exempt from taxation as provided in this section. Such real property shall not be exempt if any officer, member or employee of the owning corporation or association shall receive or may be lawfully entitled to receive any pecuniary profit from the operations thereof, except reasonable compensation for services in effecting one or more of such purposes, or as proper beneficiaries of its strictly charitable purposes; or if the organization thereof for any such avowed purposes be a guise or pretense for directly or indirectly making any other pecuniary profit for such corporation or association or for any of its members or employees; or if it be not in good faith organized or conducted exclusively for one or more of such purposes.

2. If any portion of such real property is not so used exclusively to carry out thereupon one or more of such purposes but is leased or otherwise used for other purposes, such portion shall be subject to taxation and the remaining portion only shall be exempt . . . .

3. Such real property from which no revenue is derived shall be exempt though not in actual use therefor by reason of the absence of suitable buildings or improvements thereon if (a) the construction of such buildings or improvements is in progress or is in good faith contemplated by such corporation or association or (b) such real property is held by such corporation or association upon condition that the title thereto shall revert in case any building not intended and suitable for one or more such purposes shall be erected upon such premises or some part thereof.

. . . .

8. Real property exempt from taxation pursuant to this section shall also be exempt from special ad valorem levies and special assessments to the extent provided in section four hundred ninety of this chapter.

Section 420 thus establishes the test for determining the taxable status of educational property in the state. To qualify for exemption, the property must: (*1*) be owned by a corporation or association organized exclusively for educational purposes, and (*2*) be used exclusively for carrying out such purposes. In addition, property which yields "pecuniary profit," as contrasted with "reasonable compensation" for services rendered, to any member or employee of the corporate owner is precluded from exemption.

What are the basic policy considerations which underlie the exemption

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Property (1933); Tobin, Hannan & Tolman, The Exemption From Taxation of Privately Owned Real Property Used for Religious, Charitable and Educational Purposes in New York State (1934).

of educational property from taxation? "One of the best"[5] expressions of these reasons is found in *People ex rel. Clarkson Memorial College v. Haggett:*[6]

> Education is declared to be a function of the State. The State may, and does, provide many of the educational processes. It also may, and does, delegate its function in that respect to private corporations under suitable regulations. In such instances, real property of the delegatee, used for the purposes of its charter, is, in fact, devoted to a public purpose and thereby becomes quasi-public in nature. Nontaxation of public buildings and properties is not an act of grace but is a basic principle of our law; it is the rule and not the exception. Thus, school and college properties may be said to receive their rights of tax exemption, not as acts of grace from the sovereign, nor as personal exceptions to the rule that all real property bear its share of the cost of government, but both upon the principle of nontaxation of public places and as a *quid pro quo* for the assumption of a portion of the function of the State.[7]

Another and earlier statement of these policy considerations involves a somewhat different emphasis:

> The policy of the law has been, in this State from an early day, to encourage, foster and protect corporate institutions of religious and literary character, because the religious, moral and intellectual culture afforded by them were deemed, as they are in fact, beneficial to the public, necessary to the advancement of civilization, and the promotion of the welfare of society. And, therefore, those institutions have been relieved from the burden of taxation by statutory exemption.[8]

In short, New York's policy regarding the exemption of educational

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[5] This appraisal is Judge Desmond's, dissenting in Semple School for Girls v. Boyland, 308 N.Y. 382, 396, 126 N.E.2d 294, 301 (1955).

[6] 191 Misc. 621, 77 N.Y.S.2d 182 (Sup. Ct. St. Lawrence County 1948), aff'd, 274 App. Div. 732, 87 N.Y.S.2d 491 (3d Dep't), aff'd, 300 N.Y. 595, 89 N.E.2d 882 (1949).

[7] Id. at 624, 77 N.Y.S.2d at 185. The Appellate Division, however, commented upon the Special Term's statement, as follows:

> We do not agree that our statutory prescription whereby the real estate of an educational corporation is made exempt from taxation is the recognition of any fundamental right, or the result of an implied compact whereby the State bargained away its sovereign power to tax in consideration that the one thus freed of the burden would discharge a part of the State's function and policy in the matter of education. Our statutory history as to the tax exemption of educational institutions is substantially the same as regards the exemptions granted to religious and charitable organizations. . . . While that history gives some basis for relaxing the general rule of strict construction, still, in essence, all such exemptions are in arrest of the sovereign power of the State. There is no more ground for holding that an educational corporation receives its tax exemption upon the principle of nontaxation of public places, and as a *"quid pro quo"* etc., than a like holding as to exemptions made to religious and charitable, etc., corporations. . . . As regards all such exemption statutes, it is a matter of administrative policy, not a basic principle of our law. There is no constitutional sanction save the one added in 1938, which merely confirmed certain existing laws. (N.Y. Const., Art. XVI, § 1.)

People ex rel. Clarkson Memorial College v. Haggett, 274 App. Div. 732, 735-36, 87 N.Y.S.2d 491, 493-94 (3d Dep't 1949). See also Board of Education v. Pace College, 27 App. Div. 2d 87, 91, 276 N.Y.S.2d 162, 166 (2d Dep't 1966).

[8] People ex rel. Seminary of Our Lady of Angels v. Barber, 42 Hun. 27, 30 (N.Y. App. Div., 5th Dep't 1886), aff'd, 106 N.Y. 669, 13 N.E. 936 (1887).

property from taxation, whether motivated by humanitarian reasons, economic considerations, or a combination of both, is historic and well settled.[9]

II

Statutory Construction

There are numerous New York decisions involving the principles of statutory construction which govern the application of section 420 and its predecessor statutes to the facts of a given case.[10] Thus, it is a thoroughly established rule that a statute which exempts property from taxation is strictly construed against the property owner who is claiming the exemption. Immunity from taxation will be denied unless the statute requires in clear and unambiguous terms that an exemption be granted. The rationale for this rule is that the exemption of some property from taxation, regardless of its justification, increases proportionately the cost of government which other property-owners must pay, with inequality of taxation as a result.[11]

However, when an exemption of educational or church property has been under consideration, there has been a disposition to temper the rule of strict construction. The courts have applied this rule "in the light of the purposes to be furthered by the exemptions, so as not to thwart those purposes"[12] and have recognized that the statute "should not receive an interpretation so narrow and literal as to defeat or nullify the intention of the Legislature to encourage, foster and protect corporate institutions of a religious, literary or educational character."[13]

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[9] See generally Killough, "Exemptions to Educational, Philanthropic and Religious Organizations," in Tax Exemptions 23-38 (Tax Policy League, Inc. 1939); Saxe, supra note 4; Tobin, Hannan & Tolman, supra note 4.

[10] See generally N.Y. Statutes § 294 (1 McKinney 1942, Supp. 1966) ("Exemptions from taxation") and the cases cited therein.

[11] An exemption from taxation is in the nature of a renunciation of sovereignty. It relieves one class of persons or property from its obligation to bear its share of the expenses of government, no matter how deserving of assistance that class may be, and throws a correspondingly heavier burden upon all other classes, thus creating an inequality of taxation. It is for this reason that the courts have uniformly refused to favor exemptions, and have invariably construed statutes freeing property from the burden of enforced contribution to the expense of maintaining the government most rigidly against the claimant, and have declined to conntenance such immunity unless the language of the statute is clear and unambiguous, and unless the purpose of the Legislature to exempt such property indisputably appears.
Board of Education v. Baker, 241 App. Div. 574, 575-76, 272 N.Y. Supp. 801, 803-04 (4th Dep't 1934), aff'd, 266 N.Y. 636, 195 N.E. 359 (1935).

[12] St. Barbara's Roman Catholic Church v. City of New York, 243 App. Div. 371, 373, 277 N.Y. Supp. 538, 541 (2d Dep't 1935).

[13] Matter of Syracuse University, 214 App. Div. 375, 377, 212 N.Y. Supp. 253, 256 (4th Dep't 1925). See also People ex rel. Watchtower Bible Soc'y, Inc. v. Haring, 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 (1960); People ex rel. Doctors Hosp., Inc. v. Sexton, 267 App. Div. 736, 48 N.Y.S.2d 201 (1st Dep't 1944), aff'd, 295 N.Y. 553, 64 N.E. 273 (1945); Congregation Emanu-el v. City of New York, 150 Misc. 657, 270 N.Y. Supp. 6 (Sup. Ct. New York County 1934), aff'd, 243 App. Div. 692, 277 N.Y. Supp. 955 (1st Dep't 1935).

Whether the word "educational" as used in section 420 is given a strict interpretation and limited to "education fundamentally instructional in nature,"[14] or is construed more broadly so as to include "a diffusion of general knowledge or of topics of general interest,"[15] may determine the outcome of a particular case. An argument in support of a strict construction of the word "educational" has been made by Counsel of the State Board of Equalization and Assessment, as follows:

> The statute recites other purposes, namely, "the moral or mental improvement of men and women", "scientific", "literary", "library", "bar association" and "historical" purposes, all of which in a broad sense may be classified as educational. Therefore, if the word "educational" had been used in a broad general sense, it would have embraced all of the above mentioned enumerated purposes and it would have been unnecessary to have expressly set forth such purposes distinctly.[16]

III

THE "ORGANIZED EXCLUSIVELY" REQUIREMENT

In order to be exempt from taxation, real property must be owned by a corporation or association "organized exclusively" for educational purposes. In determining whether this requirement has been met, the courts generally have based their decisions upon an examination of the stated purposes of the organization as disclosed by the statute under which it is incorporated and by its charter, certificate of incorporation, articles of incorporation, constitution and by-laws, as the case may be.[17]

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[14] State Board of Equalization and Assessment, Counsel's letter dated Dec. 4, 1961 regarding taxable status of property to be owned by Mohawk-Hudson Council on Educational Television, Inc.

[15] Ibid.

[16] Ibid. In Matter of Estate of De Peyster, 210 N.Y. 216, 221, 104 N.E. 714, 715-16 (1914), a transfer tax case, the court stated:

> A corporation or association organized exclusively for scientific, literary, library, patriotic or historical purposes, or for any one of such purposes, is necessarily to some extent educational in its nature, and in the results attained from such organization. An exclusively historical society does not gather books, manuscripts, pictures and antiquities simply to hoard them. Its purpose is not alone to discover and preserve things and facts of historical value, but to keep and record them that they may be seen, read and studied, that greater knowledge may be attained from them. The legislature in including educational corporations or associations in the first part of the statute quoted, intended corporations or associations engaged in something more than the incidental education which is necessarily derived from corporations organized exclusively for scientific, literary, library, patriotic or historical purposes.
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> If the legislature had not intended to distinguisb between an educational corporation or association as such, and a corporation or association in which education is simply incidental to, or results from the work of a corporation or association organized for historical and other named purposes, there would have been no reason for deliberately and intentionally placing them in separate groups in the same section of the statute and generally exempting the first group from all tax on transfers, and only exempting the last group from transfers of personal property other than money or securities.

[17] The test as to what is and what is not an exempt charitable corporation may be gathered from the statute under which it is incorporated (*Matter of De Peyster*, 210 N.Y. 216 [104 N.E. 714 (1914)]); or, when the act of incorporation is silent, from its constitution and by-laws (*Assn. for Colored Orphans v. Mayor*, 104 N.Y. 581 [12

Thus, Counsel of the State Board of Equalization and Assessment has stated:

> In order to be organized *exclusively* for exempt purposes, *all* of the purposes for which the corporation was organized must be exempt within section 420, for, if the certificate of incorporation contains purposes which are not enumerated in section 420, the corporation is not organized exclusively for exempt purposes . . . .[18]

The case of *National Council of Jewish Women, Inc. v. Board of Assessors*[19] brings into focus the interplay between the requirement that exempt property be owned by a corporation or association "organized exclusively" for educational purposes and the further requirement that the property be "used exclusively"[20] for such purposes. The court found that the property in question was in fact being "used exclusively" for purposes enumerated in the statute.[21] It went on to say regarding the "organized exclusively" requirement:

> However, it is settled beyond dispute that the right of a corporation to exemption must be determined not from its activities but *solely* from its articles of incorporation. If any of its powers are not among those enumerated in subdivision 6 of section 4 of the Tax Law, it is not entitled to tax exemption . . . .[22]

Then, noting that among the purposes recited in the petitioner's certificate of incorporation was that of undertaking "to bring about a closer fellowship among Jewish women,"[23] the court continued:

> What are the purposes of these closer relations and closer fellowship? This broad, general language could encompass social and fraternal activities

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N.E. 279 (1887)]) and a similar rule applies to charitable corporations created pursuant to a will (*Webster Apartments v. City of New York*, 118 Misc. 91, [193 N.Y. Supp. 650], aff'd, 206 App. Div. 749 [200 N.Y. Supp. 956 (1922)]).
People ex rel. Untermyer v. McGregor, 295 N.Y. 237, 244, 66 N.E.2d 292, 295. See Matter of Corporation of Yaddo, 216 App. Div. 1, 214 N.Y. Supp. 523 (3d Dep't 1926); People ex rel. Provident Loan Soc'y v. Chambers, 196 Misc. 367, 88 N.Y.S.2d 459 (Sup. Ct. New York County 1949), rev'd, 276 App. Div. 755, 92 N.Y.S.2d 919 (1st Dep't 1949), aff'd, 301 N.Y. 575, 93 N.E.2d 455 (1950). But see Faculty-Student Ass'n of New York State College for Teachers v. City of Albany, 17 Misc. 2d 404, 191 N.Y.S.2d 120 (Sup. Ct. Albany County 1959); Merchants Nat'l Bank & Trust Co. v. Owens, 19 Misc. 2d 244, 195 N.Y.S.2d 349 (Sup. Ct. Onandaga County 1959); Plattsburgh State Teachers College Benevolent & Educational Ass'n v. Barnard, 9 Misc. 2d 897, 170 N.Y.S.2d 712 (Sup. Ct. Clinton County 1958).

[18] State Board of Equalization and Assessment, Counsel's letter dated Dec. 4, 1961 regarding taxable status of property to be owned by Mohawk-Hudson Council on Educational Television, Inc.

[19] 21 Misc. 2d 142, 189 N.Y.S.2d 623 (Sup. Ct. Nassau County 1959).

[20] This latter requirement is discussed in detail in text accompanying notes 45-80, infra.

[21] National Council of Jewish Women, Inc. v. Board of Assessors, 21 Misc. 2d 142, 143, 189 N.Y.S.2d 623, 624 (Sup. Ct. Nassau County 1959). "The court finds, in short, that the property is being devoted solely to the mental improvement of men and women and for charitable, benevolent and educational purposes, and not for material gain." Ibid.

[22] Ibid.

[23] Id. at 144, 189 N.Y.S.2d at 625.

> and objectives. No interpretation, no matter how strained, could limit them *exclusively* to religious, charitable, patriotic or educational aims. . . .
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> . . . .
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> Regardless of the true nature of the activities carried on by the petitioner, the broad scope of its articles of incorporation does not *limit* it to those activities which are enumerated in the statute. . . .
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> . . . .
>
> The court, therefore, most reluctantly concludes that the express language of petitioner's charter bars it from the benefits conferred . . . [by the statute].[24]

This decision thus emphasizes the crucial importance of the declared use of an organization's real property as set forth in its certificate of incorporation and by-laws. In this context, two further cases merit special attention: *National Navy Club, Inc. v. City of New York*[25] and *People ex rel. Untermyer v. McGregor*.[26]

In the first of these cases, the Navy Club provided rooms, meals and entertainment for Naval enlisted personnel on leave in New York City, with the stated purpose of thereby strengthening their morale. The City contended, however, that the organization was not entitled to tax exemption because, in addition to the clearly benevolent and patriotic objects recited in the organization's charter, there was also included another purpose which was not among those enumerated in the statute, namely, "to establish and maintain . . . for their use and accommodation suitable quarters, including reading and writing rooms, baths, canteens, lodgings and such other facilities and such appurtenances and belongings as are usual in clubs or clubhouses . . . ."[27]

Rejecting the City's contention that the inclusion of this last declared purpose defeated the corporation's claim for tax exemption, the court said:

> The fair construction of these clauses is indicated by the manner in which plaintiff has proceeded to carry out the objects they express. . . .
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> . . . .
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> The main and controlling objects for plaintiff's existence and organization are none the less exclusive, in the statutory sense, because they can only be accomplished by subsidiary activities, such as providing quarters for men during their usually brief periods on shore. . . .
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> . . . .
>
> It is true that plaintiff's charter refers to other objects but clearly they are

[24] Id. at 144-45, 189 N.Y.S.2d at 626. See also Good Will Club, Inc. v. City of Amsterdam, 31 Misc. 2d 1096, 222 N.Y.S.2d 896 (Sup. Ct. Montgomery County 1961); American-Russian Aid Ass'n v. City of Glen Cove, 41 Misc. 2d 622, 246 N.Y.S.2d 123 (Sup. Ct. Nassau County 1964); Note, "Federal Income and New York Real Property Charitable Tax Exemptions: Application of the 'Exclusive' Test," 35 St. John's L. Rev. 96, 98-99 (1960).

[25] 122 Misc. 89, 203 N.Y. Supp. 114 (Sup. Ct. New York County 1923).

[26] 295 N.Y. 237, 66 N.E.2d 292 (1946).

[27] National Navy Club, Inc. v. City of New York, 122 Misc. 89, 93, 203 N.Y. Supp 114, 117 (Sup. Ct. New York County 1923).

merely the means or methods of carrying out the ultimate purpose of its existence.[28]

The second case, *People ex rel. Untermyer v. McGregor*,[29] involved the taxable status of real property owned by a corporation which had been organized, according to its certificate of incorporation, "to develop, improve, maintain and operate such land as and for a public park and gardens, and, if and to the extent so determined by its directors from time to time, as and for a public playground and/or for horticultural purposes . . . ."[30] Although the statute covers a public playground purpose in specific terms, it makes no mention of a horticultural purpose. The Court of Appeals, nevertheless, decided that the property in question was exempt from taxation. In the words of Judge Dye:

> The lower courts have construed these words to mean that the trustees of the corporation may devote the property to charitable public use or, in the alternative, horticultural purposes independent of public use and solely for the exclusive and private use and enjoyment of the members of the corporation. . . .
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> . . . .
>
> . . . . Nowhere is it said that the horticultural purpose is to be co-ordinate or equal. It is rather an embellishment or adjunct to the successful maintenance and development of the whole project as a place of healthy and cultural enjoyment. . . . [A]nd when we take into consideration the exclusive public use to which the executors and trustees, during their interim ownership, and the trustees of the corporation have devoted the property, it seems clear and indisputable that it is exempt from taxation . . . .[31]

Counsel of the State Board of Equalization and Assessment has appraised the significance of the *National Navy Club* and *Untermyer* cases in the following terms:

> The conclusion to be drawn from these cases is that although the statute requires that the corporation be organized *exclusively* for one or more of the statutory purposes and although it is well settled that a tax exemption statute must be construed strictly against the taxpayer, the courts will grant exemption where it appears that the purposes stated in the certificate of incorporation but which are not covered by the statute are merely incidental and subsidiary to its main purposes which are within the statute; that such incidental purposes are more or less necessary to fulfill its main purposes and that the *actual* use of the property fulfills purposes for which it was formed and which are within the statute.[32]

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[28] Id. at 93-94, 203 N.Y. Supp. at 117-18.

[29] 295 N.Y. 237, 66 N.E.2d 292 (1946).

[30] Id. at 242, 66 N.E.2d at 294.

[31] Id. at 243-44, 66 N.E.2d at 294-95.

[32] State Board of Equalization and Assessment, Counsel's letter dated Aug. 17, 1950 regarding taxable status of property occupied by Keuka Park Community Center, Inc. In a letter dated Aug. 4, 1949 concerning the taxable status of property owned by Fredonia State Teachers Alumni Association, Counsel of the Board stated:

> It has also been held, however, that a corporation may be "organized exclusively" for one or more of the statutory purposes, although its certificate of incorporation includes other purposes, providing such other purposes are "means and methods" of accomplishing its main purposes which are within the statute. (*National Navy Club, Inc. v.*

As has been noted, the exemption from taxation provided for by section 420 is limited to real property owned by a corporation or association organized exclusively for one or more of the purposes enumerated therein. The fact that the statute refers specifically to ownership by a corporation *or* association indicates that incorporation is not prerequisite to exemption and that section 420 is applicable to property owned by an unincorporated association. There is little authority on this point,[33] a result presumably due to the fact that in New York, apart from statutory authorization, an unincorporated non-profit association cannot take title to real property.[34]

The recent case of *Board of Cooperative Educational Services v. Buckley*[35] is one of the few cases bearing on this general question. Under relevant provisions of the Education law,[36] a board of cooperative educational services is created as "a body corporate," is authorized to hold

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City of New York, 122 Misc. 89 [203 N.Y. Supp. 114 (Sup. Ct. New York County 1923)]; *see also People ex rel. Untermyer v. McGregor*, 295 N.Y. 237 [66 N.E.2d 292 (1946)].

33 The words "religious society" when used in the laws of this state, as they frequently are, generally have reference to an incorporated religious society. It cannot be supposed that it was the legislative intention that any number of persons could come together for some religious purpose and set up a school and then claim the exemption. In using the words "religious society" it is most probable that the law-makers had in mind some legal entity capable as such of taking and holding property, and popularly known as a religious society.

Church of St. Monica v. Mayor of City of New York, 119 N.Y. 91, 95-96, 23 N.E. 294, 295-96 (1890). See also Chegary v. Mayor of New York, 13 N.Y. 220 (1855); Chegary v. Jenkins, 5 N.Y. 376 (1851); Board of Education v. Baker, 241 App. Div. 574, 272 N.Y. Supp. 801 (4th Dep't 1934), aff'd, 266 N.Y. 636, 195 N.E. 359 (1935); Berocho v. Mayor of City of New York, 18 N.Y. Supp. 792 (Super. Ct. New York City 1892); Annot., 95 A.L.R. 62, 79-80 (1935); Note, "Tax Exemptions of the Property of Educational Institutions," 6 Geo. Wash. Law Rev. 342, 351-52 (1938).

In a letter dated Dec. 12, 1962 concerning the taxable status of real property owned by the Spiritual Science Foundation, Counsel of the State Board of Equalization and Assessment stated:

> A preliminary examination of the trust agreement creating the Spiritual Science Foundation discloses that it is organized exclusively for one or more of the exempt purposes within the meaning of subdivision 1, section 420. An examination of the material forwarded to us regarding the use of the property indicates that such property is used exclusively for educational purposes.
>
> However, since the Spiritual Science Foundation is not a *corporation* or *association* within the meaning of subdivision 1, section 420, it is not entitled to exemption on its property (Church of St. Monica v. Mayor, 119 N.Y. 91 [23 N.E. 294 (1890)]; People ex rel. National Commercial Bank & Trust Co. v. Lewis, 179 Misc. 140, 39 N.Y.S.2d 64; [(Sup. Ct. Albany County 1942)]; Hunter College S.S.C. & R.C. Ass'n v. City of New York, 63 N.Y.S.2d 337 [(Sup. Ct. New York County 1946)].
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> It should be noted that under the trust agreement, the trustees have the power to incorporate. Therefore, based on the facts furnished to us it appears that if the Spiritual Science Foundation is incorporated for the purposes set forth in the first agreement . . . the property would be entitled to an exemption.

34 For a comprehensive treatment of the status of unincorporated associations in New York and the statutory and decisional law applicable thereto, see N.Y. Leg. Doc. 174th Sess. No. 65(J) (1951) ("Act, Recommendation and Studies relating to Devises and Bequests to Unincorporated Associations"); 1951 N.Y. Law Revision Commission Report 325-499. See also Board of Education v. Baker, supra note 33.

35 42 Misc. 2d 450, 248 N.Y.S.2d 270 (Sup. Ct. Westchester County), aff'd, 21 App. Div. 2d 784, 250 N.Y.S.2d 528 (2d Dep't 1964), rev'd, 15 N.Y.2d 971, 207 N.E.2d 528, 259 N.Y.S.2d 858 (1965).

36 N.Y. Educ. Law §§ 1958(4), (6) (McKinney Supp. 1966).

property "as a corporation," and is given power to "rent" facilities in which to carry out its functions. The taxable status of the board's real property was in dispute and in deciding that the property did not qualify for tax exemption, the Appellate Division stated: "In our opinion, a board of cooperative educational services organized pursuant to Section 1958 of the Education Law has no authority to purchase real property . . . and therefore the real property purchased by it is not exempt from taxation under Section 420 of the Real Property Tax Law. . . ."[37] However, the Court of Appeals reversed the Appellate Division, stating: "The Board possesses the power to own property (Education Law, § 1958, subd. 6) which qualifies for an exemption under the Real Property Tax Law (§420). The mode of acquisition is deemed irrelevant for tax purposes."[38]

A related question of whether an exemption may be claimed only by a domestic corporation organized under NewYork law was before the court in *Williams Institutional Colored Methodist Episcopal Church v. City of New York*.[39] In exempting property owned by a foreign corporation, the court stated:

> The statute by its terms draws no distinction between foreign and domestic corporations. It is the *use* of the premises, the carrying out of the exempt purposes that is the basic test.
>
> Defendant, however, and the Special Term, insert a qualifying and limiting term, not inserted by the Legislature, so that the statute is changed from reading as it does, "a corporation or association" to "a [domestic] corporation." We think there is no warrant for thus materially changing and restricting the clear and unambiguous terms of the law.[40]

It should be noted that section 420 expressly precludes an exemption where an officer, member or employee of an owning corporation or association receives or is entitled to receive "pecuniary profit;" such a person, however, may be paid "reasonable compensation" for services rendered without jeopardizing an exemption. In the abstract, the formula to determine whether there is "pecuniary profit" in a given case is clear. For example: "Exemption from the general property tax is not conditioned upon whether an enterprise is profitable. It depends upon whether one would reasonably expect that if a profit were made it would inure to the benefit,

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[37] Board of Coop. Educ. Services v. Buckley, 21 App. Div. 2d 784, 250 N.Y.S.2d 528 (2d Dep't 1964).

[38] Board of Coop. Educ. Services v. Buckley, 15 N.Y.2d 971, 973, 207 N.E.2d 528, 259 N.Y.S.2d 858, 859 (1965). See Murphy & Sitrin, "State and Local Taxation," 17 Syracuse L. Rev. 204, 209 (1965).

[39] 275 App. Div. 311, 89 N.Y.S.2d 300 (1st Dep't 1949), aff'd, 300 N.Y. 716, 92 N.E.2d 58 (1950).

[40] Id. at 313, 89 N.Y.S.2d at 302. But see People ex rel. Andrews v. Cameron, 140 App. Div. 76, 124 N.Y. Supp. 949 (3d Dep't 1910), aff'd, 200 N.Y. 585, 94 N.E. 1097 (1911); Hunter College Student Social Community & Religious Clubs Ass'n v. City of New York, 63 N.Y.S.2d 337 (Sup. Ct. New York County 1946).

among other aspects, of any 'officer, member or employee' of the educational corporation."[41] Or: "Plainly, the statute, when it referred to 'pecuniary profit from the operations' of a school, meant just that, and intended to refuse exemption to those educational corporations only, where the insiders received or were lawfully entitled to receive corporate operating profits."[42]

The application of this formula, however, to the specific facts of a particular case can prove difficult. Thus, in *People ex rel. Rye County Day School v. Schmidt*,[43] the stockholders of the educational corporation were entitled to share in a division of its assets upon dissolution. Reversing the Appellate Division, the Court of Appeals held that the corporation's real property was taxable, stating: "The corporate operation of the respondent may lawfully entitle some of its members to receive pecuniary profit other than reasonable compensation for services in effecting any of its educational purposes."[44]

IV

THE "USED EXCLUSIVELY" REQUIREMENT

The bulk of litigation involving the taxable status of educational property under Section 420 of the Real Property Tax Law centers around the statutory requirement that the property be "used exclusively" for educational purposes. It should be noted that the Real Property Tax Law provides a detailed procedure for the judicial review of real property assessments.[45] A proceeding brought pursuant to these provisions is the exclusive remedy available to a taxpayer desiring to challenge an alleged erroneous or unequal assessment.[46] Other remedies, however, are open to a taxpayer alleging that the property in question is exempt from taxation by law and that the action of the assessing officer was therefore without jurisdiction

[41] Semple School for Girls v. Boyland 308 N.Y. 382, 387, 126 N.E.2d 294, 295 (1955) (Van Voorhis, J.).

[42] Id. at 394, 126 N.E.2d at 299 (Desmond, J., dissenting).

[43] 266 N.Y. 196, 194 N.E. 405 (1935).

[44] Id. at 198, 194 N.E. at 406. See also Semple School for Girls v. Boyland, supra note 41; People ex rel. Manlius School v. Adams, 143 Misc. 459, 256 N.Y. Supp. 176 (Sup. Ct. Onandaga County 1930), aff'd, 232 App. Div. 869, 249 N.Y. Supp. 897 (4th Dep't 1931), aff'd, 257 N.Y. 549, 178 N.E. 790 (1931); Lawrence-Smith School v. City of New York, 166 Misc. 856, 2 N.Y.S.2d 752 (Sup. Ct. New York County), aff'd, 255 App. Div. 762, 7 N.Y.S.2d 486 (1st Dep't 1938), aff'd, 280 N.Y. 805, 21 N.E.2d 693 (1939); People ex rel. Provident Loan Soc'y v. Chambers, 196 Misc. 367, 88 N.Y.S.2d 459 (Sup. Ct. New York County 1949), rev'd, 276 App. Div. 755, 92 N.Y.S.2d 919 (1st Dep't 1949), aff'd, 301 N.Y. 575 (1950).

[45] N.Y. Real Prop. Tax Law §§ 700-726 (McKinney 1960, Supp. 1966).

[46] See, e.g., State Insurance Fund v. Boyland, 282 App. Div. 516, 125 N.Y.S.2d 169 (1st Dep't 1953), aff'd, 309 N.Y. 1009, 133 N.E.2d 457 (1956); Petley v. Hall, 48 Misc. 2d 807, 266 N.Y.S.2d 9 (Sup. Ct. Chenango County 1965); Oak Island Beach Ass'n v. Mascari, 44 Misc. 2d 514, 253 N.Y.S.2d 769 (Sup. Ct. Suffolk County 1964); Cedzich v. City of New York, 19 Misc. 2d 572, 190 N.Y.S.2d 167 (Sup. Ct. Queens County 1959); 22 Carmody-Wait, Cyclopedia of New York Practice 581-587 (1956, Supp. 1966).

and void.[47] In this latter case, the aggrieved party "may proceed, for example, by an action for declaratory judgment, or by a proceeding under Article 78 of the Civil Practice Act [now Civil Practice Law & Rules], to annul the act of the tax officer, or by an action to remove a cloud on title, or by an action to recover the moneys paid in satisfaction of the tax so imposed."[48] The payment of taxes in past years without protest will not estop a taxpayer from subsequently claiming an exemption.[49]

The term "educational" as used in section 420 is a comprehensive one. It embraces mental, moral and physical education. Thus, the Appellate Division has stated that "It may be assumed that the use of real property for the cultivation of athletics is an educational purpose under the Tax Law . . . ."[50] "Educational" contemplates both instruction and research.[51] It covers informal as well as formal instruction. And it includes not only the more traditional educational institutions ranging from nursery schools[52] through colleges and universities, but also organizations devoted to such activities as educational television programs and community theatre productions.

The fact that an educational purpose may be served by informal instruction considerably removed from the traditional teacher-student-classroom situation is well illustrated by *Little Theatre, Inc. v. Hoyt*.[53] Here the

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[47] Petitioner seeks to review a determination of the basic jurisdictional issue as to whether this property is in fact taxable at all. And repeatedly and uniformly the courts have held that statutes purporting to set up exclusive procedures for reviewing tax assessments do not bar collateral action when the taxes are levied without jurisdiction. State Insurance Fund v. Boyland, supra note 46, at 519-20, 125 N.Y.S.2d at 173. See the other authorities cited in note 46 supra, and American-Russian Aid Ass'n v. City of Glen Cove, 41 Misc. 2d 622, 246 N.Y.S.2d 123 (Sup. Ct. Nassau County 1964).

[48] 22 Carmody-Wait, supra note 46, at 585-86.

[49] "The contention by the city that the hospital is estopped through having paid taxes in earlier years, as a sort of practical construction, is unsound." St. Luke's Hospital v. Boyland, 12 N.Y.2d 135, 145, 187 N.E.2d 769, 773, 237 N.Y.S.2d 308, 314 (1962).

[50] People ex rel. Adelphi College v. Wells, 97 App. Div. 312, 314, 89 N.Y. Supp. 957, 958 (2d Dep't 1904), aff'd, 180 N.Y. 534, 72 N.E. 1147 (1905). See State Board of Equalization and Assessment, Counsel's letter dated Aug. 21, 1950 regarding taxable status of property owned by Paul Smith's College and used by students for skiing. See also Buffalo Turn Verein v. Reuling, 155 Misc. 797, 281 N.Y. Supp. 545 (Sup. Ct. Erie County 1935), aff'd, 257 App. Div. 902, 12 N.Y.S.2d 170 (4th Dep't 1939); Plattsburgh College Benevolent & Educ. Ass'n v. Board of Assessors, 43 Misc. 2d 741, 252 N.Y.S.2d 229 (Sup. Ct. Clinton County 1964).

[51] See People ex rel. Johnson O'Connor Research Foundation, Inc. v. Tax Comm'rs, 96 N.Y.S.2d 36, 37-38 (Sup. Ct. New York County 1950):

> [R]esearch in the field of psychometrics, which involves the measurement of aptitudes, . . . constitutes an educational or a scientific purpose within the meaning of the statute. . . . The fact that the results of relator's efforts at research may not be generally accepted as correct in the educational or scientific world is not fatal to its claim that it is engaged in educational and scientific pursuit. The types and character of its activities, not their quality, is determinative.

[52] See People ex rel. Trustees v. Mezger, 98 App. Div. 237, 90 N.Y. Supp. 488 (2d Dep't 1904), aff'd, 181 N.Y. 511, 73 N.E. 1130 (1905) (military academy); Croton Community Nursery School v. Coulter, 121 N.Y.S.2d 755 (Sup. Ct. Westchester County 1953), rev'd, 283 App. Div. 716, 127 N.Y.S.2d 416 (2d Dep't 1954) (nursery school).

[53] 7 Misc. 2d 907, 165 N.Y.S.2d 292 (Sup. Ct. Jefferson County 1956), aff'd, 4 App. Div. 2d 853, 167 N.Y.S.2d 240 (4th Dep't 1957).

petitioner's premises, devoted to the various activities connected with staging plays, were held to be used for educational purposes, the court pointing out that the performance of a play following weeks of rehearsal "serves as a vehicle for concentrated training and education in the art of dramatics and stage management to those participating therein."[54]

With respect to educational television, Counsel of the State Board of Equalization and Assessment has stated:

> We have been advised that the afternoon and evening programs will consist of informal presentations in the form of lectures and discussions and programs of music appreciation. . . . Since such programs as a whole appear to consist mainly of instructional in-school courses, with a primary end of providing formal education not only to grade school pupils, but also on post-graduate levels, . . . the presentation of such programs would constitute an educational purpose within the spirit and the letter of section 420 of the Real Property Tax Law.
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> The fact that the late afternoon and evening schedule will consist of less formal presentations, including current events, will not vary this conclusion, since such presentations will constitute a coordinate part of the function of the Mohawk Council as an educational body of this type.[55]

In deciding whether property devoted to a particular activity falls within the statutory requirement of exclusive educational use, the New York courts have over the years consistently adhered to a general formula which is as simple to state in the abstract as it is oftentimes difficult to apply in concrete cases. In 1901 the Appellate Division said: "In determining whether property is used for the purposes of an institution of this kind so as to exempt it from taxation, it must be made to appear that the use is necessary or fairly incidental to the maintenance of the institution for the carrying out of the purposes for which it was organized."[56] Almost sixty years later the Court of Appeals reaffirmed this basic formula: "Historically and in reason, the only test is whether the . . . operation is reasonably incident to the major purpose of its owner."[57]

Thus tested, premises used by college fraternities have been denied exemption.[58] There may be a question in a given case as to whether par-

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[54] Id. at 911, 165 N.Y.S.2d at 296.

[55] State Board of Equalization and Assessment, Counsel's letter dated Dec. 4, 1961 regarding taxable status of property to be owned by Mohawk-Hudson Council on Educational Television, Inc.

[56] People ex rel. Blackburn v. Barton, 63 App. Div. 581, 583, 71 N.Y. Supp. 933, 935 (4th Dep't 1901).

[57] People ex rel. Watchtower Bible Soc'y v. Haring, 8 N.Y.2d 350, 358, 170 N.E.2d 677, 681, 207 N.Y.S.2d 673, 678 (1960).

[58] See, e.g., People ex rel. Delta Kappa Epsilon Soc'y v. Lawler, 74 App. Div. 553, 77 N.Y. Supp. 840 (4th Dep't 1902), aff'd, 179 N.Y. 535, 71 N.E. 1136 (1904); People ex rel. Cornell Univ. v. Thorne, 184 Misc. 630, 57 N.Y.S.2d 6 (Sup. Ct. Tompkins County 1945). But see also People ex rel. Walcott v. Parker, 84 Misc. 534, 146 N.Y. Supp. 753 (Sup. Ct. Broome County 1914) (property of Telluride Association at Cornell University held exempt).

ticular housing facilities are occupied by a fraternity of the traditional type or whether they accommodate a group living unit which meets the requirement of exclusive educational use. The determination of this question will, of course, depend on the specific facts before the court.[59] In any event, property has been held entitled to exemption when used for such purposes as dining halls and cafeterias; hospital and infirmary facilities; and living quarters for students, faculty and administrative personnel.[60]

In this connection, it should be noted that tax exemption is not lost merely because an institution undertakes to achieve an exempt purpose through an independent contractor rather than by using its own employees. Thus, when Pace College entered into an agreement with Horn & Hardart to operate the college cafeteria, the court decided that this did not impair the exempt status of the property:

> This cafeteria is part of the operation of Pace College. . . .
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> . . . .
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> The particular method adopted by a college for performing this function is not controlling. . . . It is said that exemption can adhere only if the college operates the cafeteria itself, but the college has to do so through others. It matters not whether this is done by servants who are directly employed by the college, or by an independent contractor. . . . The college retains general supervision and control over the operation, which is directed exclusively to the accomplishment of its educational purposes.[61]

Vacant, unimproved land presents a special problem in so far as the exclusive use requirement is concerned. Section 420(3) provides in this connection that non-income-producing property which is not in "actual use" for educational purposes because of the absence of suitable facilities thereon shall nevertheless qualify for exemption if the construction of such facilities "is in progress or is in good faith contemplated"[62] or if title to the property is subject to reversion in the event that facilities not appropriate for educational purposes are erected on the premises.[63]

A parcel of vacant land has been exempted from taxation, notwithstanding its unimproved state, when it has been regarded as an integral part of

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[59] See, e.g., Cornell University v. Board of Assessors, 24 App. Div. 2d 526, 260 N.Y.S.2d 197 (3d Dep't 1965).

[60] See, e.g., St. Luke's Hosp. v. Boyland, 12 N.Y.2d 135, 187 N.E.2d 769, 237 N.Y.S.2d 308 (1962); Matter of Syracuse University, 214 App. Div. 375, 212 N.Y. Supp. 253 (4th Dep't 1925); People ex rel. Clarkson Memorial College v. Haggett, 191 Misc. 621, 77 N.Y.S.2d 182 (Sup. Ct. St. Lawrence County 1948), aff'd, 274 App. Div. 732, 87 N.Y.S.2d 491 (3d Dep't), aff'd, 300 N.Y. 595, 89 N.E.2d 882 (1949).

[61] Pace College v. Boyland, 4 N.Y.2d 528, 532-34, 151 N.E.2d 900, 902-03, 176 N.Y.S.2d 356, 358-60 (1958).

[62] See Roman Catholic Diocese v. City of New York, 38 Misc. 2d 815, 238 N.Y.S.2d 889 (Sup. Ct. Queens County 1963).

[63] See Matter of Ladycliff College, 266 App. Div. 753, 41 N.Y.S.2d 149 (2d Dep't 1943), aff'd, 293 N.Y. 712, 56 N.E.2d 729 (1944) (the part of the statute distinguishing between ownership of property in conditional rather than absolute fee will be given a literal construction).

an educational enterprise.[64] In this situation, some courts have indicated an interest in whether the idle parcel in question is a separate and detached plot or whether it is contiguous to other property which is clearly used for educational purposes and thus entitled to exemption.[65]

An educational institution may acquire vacant land and continue to hold it in its unimproved state in order to guard against undesirable activities thereon or to protect a view with respect to other property then being used for exempt purposes. The case of *In re Major Deegan Boulevard*,[66] involving New York University's Hall of Fame for Great Americans, is relevant in this connection. Here the court stated:

> The land which is subject to the taxes, relief with respect of which is now sought, was acquired to protect the far flung view from the Hall of Fame and as well as to keep said structure visible from the Harlem River and the heights of Manhattan arising from the west shore of said river. . . .
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> In the existing street development around the university its needs for additional space have not been capable of satisfaction by acquisition of parcels contiguous to the large plot. Nor, for the same reason, is the view from the Hall of Fame capable of protection by acquisition of contiguous plots. Yet protection of the view from the Hall of Fame and of visibility thereto are, it is held, a proper university function.[67]

Another aspect of this general problem involved an inquiry to the State Board of Equalization and Assessment as to whether a tax exemption might be granted on a "vacant lot purchased by Wells College to 'protect' college-owned faculty houses, presumably tax exempt, adjoining either side of the lot."[68] Counsel of the Board replied:

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[64] See Matter of Mary Immaculate School, 188 App. Div. 5, 175 N.Y. Supp. 701 (2d Dep't 1919); People ex rel. Sailors' Snug Harbor v. Miller, 169 Misc. 19, 6 N.Y.S.2d 787 (Sup. Ct. N.Y. County 1938). But see People ex rel. Blackburn v. Barton, 63 App. Div. 581, 71 N.Y. Supp. 933 (4th Dep't 1901).

[65] See People ex rel. Missionary Sisters v. Reilly, 85 App. Div. 71, 83 N.Y. Supp. 39 (2d Dep't 1903), aff'd 178 N.Y. 609, 70 N.E. 1107 (1904); In re Major Deegan Blvd., 131 N.Y.S.2d 330 (Sup. Ct. Bronx Conty 1954); New York Catholic Protectory v. City of New York, 174 Misc. 427, 23 N.Y.S.2d 789 (Sup. Ct. Bronx County 1940). See also St. Luke's Hosp. v. Boyland, supra note 60, at 144, 187 N.E.2d at 773, 237 N.Y.S.2d at 313: "That is not a crucial factor. Neither is the circumstance that these buildings are across the street from St. Luke's Hospital and not immediately contiguous thereto."

[66] Supra note 65.

[67] Id. at 331-32. See also People ex rel. Untermyer v. McGregor, 295 N.Y. 237, 66 N.E.2d 292 (1946):

> From the record it appears that the property affords a view of the Hudson River beyond Tappan Zee north and south to the George Washington Bridge which might and could be destroyed if the property were sold and buildings erected. We feel that it should be treated as an integral part of the park and while so used, exempt from taxation.

Id. at 244, 66 N.E.2d at 295; In re Miriam Osborn Memorial Home Ass'n, 140 N.Y. Supp. 786, 787 (Sup. Ct. Westchester County 1912): "[T]he acquiring of these two tracts is evidently very important to the association, because of the protection given the property against undesirable building or business which might otherwise exist on the two tracts in question."

[68] State Board of Equalization and Assessment, Counsel's letter dated March 13, 1950 regarding taxable status of Wells College property.

> In the light of the foregoing cases, it appears that the test of exclusive use provided by the statute is met if the possession of the vacant lot by Wells College "protects" other adjoining exempt property owned by it in that it affords a frontage or outlet for such other property, or in that it prevents the intrusion of undesirable buildings or business, or in that it affords to the rest of the property a view which might otherwise be destroyed. Likewise, it would appear that such lot would be exclusively used for educational purposes if it aided in the development of the educational purposes of the corporation in some other way so that it could fairly be treated as an integral part of the college system. It further appears that the circumstance that the lot does not adjoin the college campus or that it is not absolutely necessary for a successful conduct of the college is not sufficient reason to deny tax exemption.[69]

As indicated, the exclusive use of property for educational purposes is prerequisite for exemption from taxation under section 420. In this context, does the fact that income is derived from the property preclude such an exemption? This question requires examination from a number of different points of view.

In the first place, it should be noted that section 420(2) expressly provides for *pro tanto* exemption: whenever part of specified premises are leased or otherwise used for non-exempt purposes, such part will be subject to taxation, and only the balance of the property which is being used exclusively for educational purposes will be entitled to exemption. However, one exempt corporation may permit its real property to be used by another exempt corporation for exempt purposes without losing its right of exemption "so long as any moneys paid for such use do not exceed the amount of the carrying, maintenance and depreciation charges of the property or portion thereof, as the case may be."[70]

Property which is used primarily for income or investment purposes unrelated to the basic educational function of an institution is not entitled to tax exemption.[71] In such circumstances, moreover, an exemption will not be saved merely because the income in turn is used for a concededly exempt purpose. *People ex rel. Young Men's Ass'n v. Sayles*[72] is a case in point. One part of the premises involved in this litigation was used for library purposes and thus clearly exempt from taxation; another part, consisting of theatre facilities, was rented to others for public enter-

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[69] Ibid.

[70] N.Y. Real Prop. Tax. Law § 420(2) (McKinney Supp. 1966).

[71] See People ex rel. Mizpah Lodge v. Burke, 228 N.Y. 245, 126 N.E. 703 (1920); Pratt Institute v. City of New York, 99 App. Div. 525, 91 N.Y. Supp. 136 (2d Dep't 1904), aff'd, 183 N.Y. 151, 75 N.E. 1119 (1905); People ex rel. Adelphi College v. Wells, 97 App. Div. 312, 89 N.Y. Supp. 957 (2d Dep't 1904), aff'd, 180 N.Y. 534, 72 N.E. 1147 (1905); People ex rel. Young Men's Ass'n v. Sayles, 32 App. Div. 197, 53 N.Y. Supp. 67 (3d Dep't), aff'd, 157 N.Y. 677, 51 N.E. 1093 (1898); People ex rel. The Frick Collection v. Chambers, 196 Misc. 1026, 91 N.Y.S.2d 525 (Sup. Ct. New York County 1949), aff'd, 276 App. Div. 891, 94 N.Y.S.2d 819 (1st Dep't 1950).

[72] Supra note 71.

tainment. The owner devoted this rental income exclusively to the maintenance of the library. The court was "asked to hold that, because the rentals of the commercial portions of this building are applied to the expenses of the benevolent objects promoted in the other portion, therefore, in effect, the whole building is exclusively used for benevolent purposes, and for none other."[73] Responding to this request, the court stated:

> In our view the statute does not permit us this pleasure. . . .
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> . . . .
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> It is the exclusive use of the real estate for carrying out thereupon one or more of the purposes of the incorporation of the relator which confers the right of exemption, and not the benefits accruing to it and its useful work from the income derived from others in consideration of their use of the real estate for their purposes.[74]

Although as indicated above, the production of income may jeopardize the tax-exempt status which property might otherwise enjoy, this is by no means a necessary consequence. If the income results from activities which are reasonably connected with and fairly incidental to the basic educational purpose of the institution and is not excessive in amount, then its receipt will not adversely affect the owner's right of exemption. Thus, payment of tuition by students for their education and payment of rent by faculty members for university-owned housing accommodations will not impair tax exemptions.[75]

Two Jehovah's Witnesses cases are helpful in this connection. Involved in each of them was the sale to outsiders of surplus foodstuffs grown on the organization's farm in upstate New York and the impact of these sales upon the farm's tax-exempt status. In *People ex rel. Watchtower Bible Soc'y v. Mastin*,[76] where the surpluses constituted approximately thirty-five per cent of the total production and were marketed under a rather systematic sales program, the Special Term denied an exemption, saying:

> The line of cases cited involving educational institutions, where farms were operated for experimental, scientific and demonstration purposes and some products were sold, need not be distinguished individually. The property in question here was used for no such purpose. It is unnecessary to distinguish individually the line of cases holding that occasional sporadic, irregular and insiguificant sales do not destroy the exemptiou. The factual situation here is not comparable.[77]

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[73] Id. at 200, 53 N.Y. Supp. at 69.

[74] Id. at 200, 202, 53 N.Y. Supp. at 69, 71. See also the other authorities cited in note 71 supra.

[75] See St. Luke's Hosp. v. Boyland, 12 N.Y.2d 135, 187 N.E.2d 769, 237 N.Y.S.2d 308 (1962); Semple School for Girls v. Boyland, 308 N.Y. 382, 126 N.Y.2d 294 (1955); Matter of Mary Immaculate School, 188 App. Div. 5, 175 N.Y. Supp. 701 (2d Dep't 1919).

[76] 191 Misc. 899, 80 N.Y.S.2d 323 (Sup. Ct. Tompkins County 1948).

[77] Id. at 905, 80 N.Y.S.2d at 328.

In *People ex rel. Watchtower Bible Soc'y v. Haring*,[78] however, where five to ten per cent of the produce was sold to the public as surplus, the Court of Appeals exempted the farm lands from taxation, stating: "We do not see how disposal of surpluses of this comparatively small size could in reason be held to be more than incidental and insubstantial."[79]

Counsel of the State Board of Equalization and Assessment recently had occasion to discuss this question of the taxable status of revenue-producing property and said, in part:

> Property used exclusively for exempt purposes has been held to include facilities which are reasonably necessary to fulfill required functions of a completed educational or religious institution. Thus, parking facilities for student's vehicles which are maintained exclusively for student's use and convenience would appear to be reasonably necessary in carrying out the Institution's purposes. The fact that a charge may be imposed upon the use of a parking lot will not of itself preclude exemption. If a charge is made in order to realize a profit from the operation, such parking lot would not be exempt. However, a charge imposed upon the use of a parking lot in order to defray costs of maintenance, or as a control factor in its use . . . will not destroy the exempt status of a parking lot. The incidental use of such parking lots to accommodate the overflow of cars owned by persons attending the educational, religious or cultural programs of the Institution would not preclude an exemption of such parcels.[80]

CONCLUSION

The present state constitutional safeguards surrounding the exemption of educational property from taxation are an outgrowth of the Constitutional Convention of 1938.[81] New York is now on the eve of the Constitutional Convention of 1967, and there is every reason to believe that problems relating to taxation and finance will again command the attention of the delegates. It is hoped that the foregoing discussion of the taxable status of property of educational institutions may prove relevant and useful in this as well as in other contexts.

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[78] 8 N.Y.2d 350, 170 N.E.2d 677, 207 N.Y.S.2d 673 (1960).

[79] Id. at 354, 170 N.E.2d at 678, 207 N.Y.S.2d at 675. See Note, "Federal Income and New York Real Property Charitable Tax Exemptions: Application of the 'Exclusive' Test," 35 St. John's L. Rev. 96, 99-103 (1960). See also Syracuse University v. Murphy, 100 App. Div. 2d 468, 200 N.Y.S.2d 807 (3d Dep't 1960); New York Conference Ass'n of Seventh-Day Adventists v. Schenck, 111 N.Y.S.2d 329 (Sup. Ct. Cayuga County 1949), rev'd, 279 App. Div. 845, 109 N.Y.S.2d 774 (4th Dep't), aff'd, 304 N.Y. 706, 107 N.E.2d 654 (1952).

[80] State Board of Equalization and Assessment, Counsel's letter dated Sept. 2, 1966 regarding taxable status of property owned by Chautauqua Institution. See also N.Y. Ops. State Tax Comm'r, in 31 State Dep't 91 (1924) (regarding taxable status of property of Eastman School of Music). For a discussion of the related question of the taxable status of property which yields "pecuniary profit," as contrasted with "reasonable compensation" for services rendered, to any member or employee of the corporate owner, see text accompanying notes 41-44 supra.

[81] See N.Y. Const. art. 16, § 1. See also Report of 1938 New York State Constitutional Convention Committee, Vol. X, ch. X, "Tax Exemptions Under the General Property Tax."